

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1966 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SWASTIK SURFACUTANT LTD

Versus

COMMISSIONER OF SALES TAX

Appearance:

1. Special Civil Application No. 1966 of 1995
MR SN SOPARKAR, SENIOR ADVOCAT for Petitioner No. 1-2
MR UR BHATT, AGP. for Respondent No. 1-4
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CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 27/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 The petitioner, a limited company challenges the action of respondent nos. 1 and 2 by way of notices (Annexures :A,B & C) issued on 23/2/1995 and 3/4/1995 as being arbitrary and against the provisions of law.

2 It appears that the petitioner company which was having manufacturing units for manufacturing detergent powder was suffering from financial crisis and due to accumulated losses approached the Board For Industrial and Financial Reconstruction (BIFR) under the provisions of Sick Industries Companies (Special Provisions) Act,1985 (SICA). The reference was accordingly registered as Case No.208 of 1988 and ICICI was appointed as the operating agency by BIFR. In light of this situation the petitioner company has challenged the impugned notices and sought interim relief against execution, implementation and operation of the impugned notices by placing reliance on provisions of Section 22 of SICA.

3 The matter was admitted by this Court on 14/3/1995 and since 29/3/1995 interim relief in terms of paragraph 7(B) has continued.

4 Heard Mr.S.N.Soparkar, learned Senior Advocate appearing on behalf of the petitioner and Mr.Uday R.Bhatt, learned Assistant Government Pleader appearing on behalf of the respondents. It was submitted by Mr.Soparkar that the issue is no longer res integra and stands concluded by a decision of this Court in case of Core Healthcare Ltd. Vs. State of Gujarat rendered on 31/3/2004 in Special Civil Application No.9027 of 2003 and Special Civil Application No.9028 of 2003 since then reported in 2004(2) G.L.H.163. That as per the said judgment the petitioner is entitled to be protected for all the past dues and is required to pay sales tax to the respondents on and from tomorrow i.e. 28/12/2004. As against that it was submitted by Mr.Uday R.Bhatt that, in principle the respondents are entitled to recover all current dues and this is the specific stand adopted by the respondents in the affidavit-in-reply filed on 23/6/1995. He further submitted that in the aforesaid judgment the Court has not held that only prospective dues are to be recovered but the correct ratio is that the respondent would be prevented from making recovery of only the past dues till cutoff date fixed by the BIFR. Therefore, it was submitted that the respondents should be permitted to recover all the current dues, even if they be retrospectively, from the cutoff date fixed by

BIFR.

5 Having heard the parties it is apparent that the issues raised in this petition stand concluded and answered by the aforesaid judgment rendered by the Division Bench of this Court. However, it is necessary to note that the present petition is pending since 14/3/1995, when it came to be admitted and the reference made by the petitioner was registered with BIFR much prior thereto i.e. in 1988 when Case No.208 of 1988 was registered under SICA. In the circumstances, the ratio of the aforesaid decision as well as the directions in the operative portion would squarely apply subject to the following changed circumstances in case of the petitioner.

6 During the course of hearing Mr.Soparkar made a statement at the Bar that the petitioner company has been voluntarily making payment of sales tax dues with effect from 1/4/1998 and is seeking protection only in relation to the dues prior to that point of time. In the circumstances, applying the aforesaid decision the impugned notices at Annexures : A,B & C are hereby quashed and set aside, subject to the clarification that the respondents shall not be entitled to recover past dues i.e. dues for the period upto 31/3/1998. Accordingly, the petition is allowed to the aforesaid extent and Rule is made absolute protanto. There shall be no order as to costs.

(D.A.Mehta, J)

(H.N.Devani, J)

m.m.bhatt